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Children, Rights and Justice in Northern Ireland: Community and Custody

Una Convery, Deena Haydon, Linda Moore and Phil Scraton

Correspondence: Professor Phil Scraton, Institute of Criminology and Criminal Justice, Queen's University Belfast, BT7 1NN, Northern Ireland. Email: p.scraton@qub.ac.uk

Abstract

This article is based on primary research conducted with children in community and custodial settings in Northern Ireland. It provides an analysis of the social, economic and political context in which children's rights are routinely breached. Presenting consultations with children in the community, the article considers the impact of negative assumptions, disrespect and exclusion from participation. It demonstrates how the rights of socially excluded and marginalized children are consistently undermined. Further, it draws on the experiences of children and the views of staff in considering the rights of children in custody. In conclusion, the article explores the contributions of critical analysis and rights-based discourses within an increasingly punitive climate.

Keywords: childhood, community, custody, exclusion, rights

Introduction

During the early-1990s a series of unrelated disturbances in towns in England and Wales dramatically raised the profile of youth offending. Typically illustrative of Cohen's (1972) conceptualization of 'folk devils' and their attendant 'moral panics', public indignation about lawless youth was fed a diet of 'joyriders', 'ram-raiders', 'bail bandits' and 'persistent young offenders'. In February 1993, a two-year-old child was abducted and killed by two 10-year-olds on Merseyside. The death of James Bulger was mobilized, in popular and political discourses, as the fatal consequence of a broader 'crisis' in contemporary childhood; 'a catalyst for the consolidation of an authoritarian shift in youth justice ... a shift which, in legal and policy initiatives, was replicated throughout all institutional responses to children and young people' (Scraton, 1997: 170). Media commentators and opportunist politicians condemned the erosion of family life and the decline of school standards. 'Sink estates', a euphemism for impoverished neighbourhoods, were portrayed as unsafe places for 'respectable' inhabitants. 'Failing schools' were projected as battlegrounds blighted by bullying, truancy and disruptive pupils. Families, as primary sites of socialization and discipline, were classified as 'dysfunctional'. The rhetoric of 'crisis', often supported by quasi-academic discourses, presented social exclusion as a consequence of individual/social pathology and community degeneracy.

In June 1997, after 18 years in the political wilderness, the Labour Party returned to government. The then Home Secretary, Jack Straw, assumed the authoritarian mantle from his predecessors: 'Today's young offenders can too easily become tomorrow's hardened criminals', their behaviour condoned by 'an excuse culture ... within the youth justice system' (*The Guardian*, 28 November 1997). Youth justice was set firmly on a hardening, punitive course. It moved beyond 'crime' to include naming and regulating 'anti-social behaviour' through civil injunctions (Anti-social Behaviour Orders) inducting, when breached, increased numbers of children into the criminal justice system and escalating child incarceration (Goldson, 2002; Scraton, 2004). The politics of criminalization found sustenance in an ideology of demonization. As the 'crisis' in childhood consolidated, 'fuelled by the media and seized upon by politicians' the 'ideological whiff of child-hate' prevailed; 'a manifestation of power and subordination akin to race-hate, misogyny and homophobia' (Scraton and Haydon, 2002: 315).

In contrast to England and Wales, Northern Ireland is a jurisdiction undergoing transition following thirty years of conflict and a decade characterized by the 'Peace Process'. After the 1998 Belfast/Good Friday Agreement and the first elections under devolution in the same year, the Northern Ireland Assembly was suspended four times – the longest period being from 2002 until 2007. Although the Assembly was resumed in May 2007, the UK Secretary of State for Northern Ireland retained responsibility for 'excepted' and 'reserved' matters, including criminal justice and policing. While the moral panic evident in British cities did not have comparable resonance in Northern Ireland, legislation targeting anti-social behaviour was introduced in 2004 by the UK Government and pressure has mounted on legislators to address the 'problem' of lawlessness amongst children and young people.

Across Northern Ireland several high profile incidents of serious violence, including rape and murder, have been represented by politicians and the media as inevitable outcomes of escalating 'crisis' in the criminal and anti-social behaviour of children and young people. Local 'family feuds', 'breakdown' in parental responsibility and control, the emergence of a marginalized 'underclass' youth with ready access to alcohol and drugs, communities unable to self-regulate in the context of a deficit in official policing, have been portrayed as evidence of individual and social pathology with families labelled 'inherently evil', their children as 'scum'. Within this climate, progress in challenging negative representations of children and young people and proactively working to fulfil their rights has been inhibited, if not reversed.

Context of Social Exclusion and Conflict in Northern Ireland

Analysis of rights and justice for children in Northern Ireland requires location within the social, economic and political context of the jurisdiction. While the impact of three decades of violent conflict on children and young people has yet to be fully acknowledged, several generations have endured pervasive sectarianism, hardline policing, military operations and paramilitary punishments. In popular discourse and media coverage great play is made of 'leaving the past behind' and 'moving on'. Acknowledging the past and recognizing context, however, are essential to societal recovery and reconstruction. Smyth et al. (2004: 18–20) note that between 1969 and 2003, of the 3600 plus people killed in the conflict, 274 were children under 18 and 629 were aged 18 to 21. Children's experiences of politically-related violence included subjection to paramilitary punishment attacks; witnessing killings, shootings

or punishments; rioting; being exiled and suffering school-related sectarian bullying (Smyth et al., 2004: 96). Less dramatic and often unaddressed were 'chronic anger, lack of trust in adults, isolation and feelings of marginalisation, bitterness at other community or at the police; distrust of all authority; feelings of marginalisation and lack of contact with or knowledge of "other" community' (Smyth et al., 2004: 99). Geographically, the impact of the conflict was not evenly experienced. Six Northern Ireland postal areas accounted for 58 per cent of conflict-related deaths of children (Smyth, 1998: para. 3.2.2).

Kilkelly et al. (2004) reflect on intergenerational consequences of the conflict, including arrests by the army; forced house entry at night by the police; parents imprisoned, 'on the run' or killed. Their research notes a chronic deficit in appropriate child mental health services to support children and strongly recommends reconsideration of how children in conflict with the law are defined and criminalized. Yet the Bamford Review of Mental Health and Learning Disability (McClelland, 2006: 13) describes child and adolescent mental health service provision in Northern Ireland as 'characterised by overwhelming need and chronic underinvestment'.

Poverty is a defining factor in the lives of many children and their families in Northern Ireland, negatively affecting health and well-being, educational and employment opportunities and access to quality accommodation (Save the Children, 2007). Between 2001 and 2004, 13 per cent of Northern Ireland's children lived in persistent severe poverty compared with five per cent in Britain (Monteith et al., 2008: 2–3). Benefit levels remain below the poverty line and income levels of lone parent families and couples with children are lower than comparable levels in Britain. Income deprivation is compounded as poor households pay proportionately more in Northern Ireland for essential goods and services such as food, fuel, transport, insurance and banking. People living in the 20 per cent most deprived electoral wards have poorer life expectancy, higher rates of admission to hospital, more infant deaths and more suicides than Northern Ireland's population as a whole (Haydon, 2008).

Such deep-rooted concerns about children's well-being, alongside ambivalence towards their rights, have persisted despite significant economic and political change in Northern Ireland. While devolution was widely reported as heralding the end of conflict and the arrival of a 'post-conflict' society, transition is slow and complex. The suspension of the Assembly impacted heavily on provision for children and young people, not least the development of an effective strategy for change. Together with high levels of poverty and social exclusion, the legacy of conflict has an enduring impact on the 'peace process' generation. Despite advances in community-based restorative justice, children and their families still live under the threat of enforced exile or punishment by paramilitaries or local vigilantes. Occasionally, interface confrontation flares between neighbouring communities divided by sectarianism. Leonard (2005: 105) notes that at community interfaces children remain resigned to the consolidation of division, reporting less armed conflict but 'more hatred'. Kilkelly et al. (2004: 112) cite a health professional's concerns about these contexts:

In some of the most deprived and fragmented sections of our society, rising levels of emotional and psychological stress among children and young people, manifesting as anxiety, depression, deliberate self-harm and escalating suicide rates, are collateral damage following years of civil strife.

The legacy of conflict has taken its toll on children, many themselves now parents.

Rights of Children: The International Framework

The United Nations Convention on the Rights of the Child (CRC) establishes the full range of social, cultural, economic, civil and political rights for children. The Convention was ratified by the United Kingdom Government in 1991; however, it is not incorporated into domestic law. Convention rights apply to children under the age of 18 and include the fundamental principles of non-discrimination (Article 2), the 'best interests' of the child (Article 3) and the child's right to participate in decisions affecting them (Article 12). States must make periodic reports every five years to the United Nations Committee on the Rights of the Child (UN Committee) and in 2002 the Committee recommended that the UK incorporate into domestic law the rights contained in the Convention (UN Committee, 2002: para. 9). The UN Committee also produces general commentary on specific issues which should be used to interpret the rights in the Convention, including General Comment No. 10 on juvenile justice (UN Committee, 2007). In addition to the CRC a range of declaratory instruments, although not legally binding, establish human rights standards. With regard to youth justice, these include the Beijing Rules (UN Standard Minimum Rules for the Administration of Juvenile Justice) (United Nations, 1985); the Havana Rules (United Nations Rules for the Protection of Juveniles Deprived of their Liberty) (United Nations, 1990a); and the Riyadh Guidelines (UN Guidelines for the Prevention of Juvenile Delinquency) (United Nations, 1990b). Children are also entitled to the protection of other international instruments including the European Convention on Human Rights and Fundamental Freedoms (ECHR) which has been incorporated into domestic law in the form of the Human Rights Act 1998. ECHR articles include the right to life (Article 2); freedom from torture, inhuman and degrading treatment (Article 3); the right to liberty and security of the person (Article 5); and a fair trial (Article 6).

Children's rights in the community and in detention include the rights to protection from harm (CRC Article 19); privacy (CRC Article 16); family life, including alternative care where appropriate (CRC Articles 9, 10, 16, 18 and 20 and ECHR Article 8); health and the highest attainable standard of healthcare (CRC Articles 23 and 24); adequate standard of living (CRC Article 27); and education (CRC Articles 28 and 29).

Rights specific to the youth justice process include the principle that use of custody must be a last resort, where all other alternatives have been explored and for the shortest period of time (CRC Article 37). Children must not be detained with adults unless this is in the child's best interests (CRC Article 37). The UK Government has attached a reservation to Article 37, refusing to guarantee that children will not be held with adults in situations where it is deemed that there is no suitable accommodation or facilities in a young offenders' detention centre, or where it is considered to be 'mutually beneficial' to accommodate children and adults together. States have a duty to establish an age of criminal responsibility (CRC Article 40) which is not too low and is broadly in line with other social responsibilities, such as the age of marriage or the age of civil majority (Beijing Rule 4.1). The UN Committee comments that it is unacceptable for the age to be set lower than 12 and commends states with a minimum age between 14 and 16 (UN Committee, 2007: para. 30).

The declaratory instruments emphasize prevention of delinquency, diversionary and restorative measures, non-institutionalization and alternatives to detention, and provision of services appropriate to meeting children's needs. In response to the UK Government's last periodic

report, the UN Committee (2002: para. 59) commented negatively on the low age of criminal responsibility, the use of solitary confinement and physical restraint, high levels of bullying, self-harm and suicide in youth detention centres and the failure to separate children from adults. More recently, the UN Committee (2007: para. 12) noted that ‘the voices of children involved in the juvenile justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights’.

Childhood, Conflict and Rights in the Community

Recent consultations with 132 ‘hard-to-reach’ children aged eight to 25 across Northern Ireland, conducted by one of the authors (Haydon, 2007), explored what rights they felt children should have and, currently, whether these rights were promoted and protected. Their responses, typified by ‘We don’t have any rights’, reflected experiences of persistent, deep-rooted ideological constructions of their status and value in society:

We are not valued in our society ... labelled as bad news, as trouble, nagged at.

If you’re walking around, older people have negative perceptions of young people – they see one group act in a certain way and assume that all young people are like that.

They felt scant respect for their views or their personal identities:

Some adults don’t think kids or young people have anything worth saying.

Adults think kids should be seen and not heard ... in politics, the community, everywhere. They should be seen and heard. But you have to be seen first to be heard!

No adults treat us with respect – I wear a hood, I am a hood.

Denial of equal status or equal entitlement to rights were significant issues:

No-one listens just because they are kids.

Because they’re young people, no-one wants to listen to them, e.g. government, mum/dad/ guardians, politicians, teachers.

This extended to being ignored by adults:

They’re treated as if they have nothing to say because they are too young.

They are regarded as ill-informed in general.

Adults don’t listen to children. They think they’re right.

Adults don’t act on what we say.

They described how their right to ‘speak’, ‘be heard’, ‘be asked their opinions’ – the right to participation (CRC Article 12) – was undermined by exclusion from decision-making processes in every aspect of their lives. This included family or alternative care, school, health care and communities. For young people in conflict with the law, being ignored or excluded from decisions was a consistent issue:

They should let us make our own decisions. Social workers are breathing down your neck.

Teachers should listen to what you have to say.

The police never respect young people, and people don't respect them.

Feelings of marginalization were clearly articulated through a range of experiences mediated by the social, economic, and political contexts in which children and young people lived. The legacy of the conflict implicitly impacted on their lives particularly through historical under-investment, segregated education and housing provision, lack of amenities and safe social spaces. In some communities the impact was explicit, specifically the continuing influence of former paramilitaries:

Young people get punishment beatings... for fucking about, stealing cars, house burglaries.

Some young people are forced to do stuff. They're pushed to the edge, and have to do stuff.

[People joy-ride] because they have fuck-all to do... because there are too many rules about driving... there's nothing to do, so young people steal cars... But they shouldn't get knee-capped for doing that, or put out of the country.

Poverty and inadequate standard of living (CRC Article 27) clearly diminish health and social opportunities. Children and young people were aware of the negative impacts of poverty: 'poor people don't have quality of life'. Many discussed what constituted 'a decent amount of money to live on' and the consequences of insufficient benefits:

You couldn't live on the brew [benefits].

You have £80 every two weeks to cover food, heating, electric, clothes, visiting family, having a social life.

For some, the right to full-time education (CRC Article 28; Riyadh Guideline 20) was unfulfilled. Despite recommendations regarding provision of special assistance for those finding it difficult attending school (Riyadh Guideline 30) and development of specialized prevention programmes, educational materials, curricula and approaches for young people 'at social risk' (Riyadh Guideline 24), there was minimal support:

They don't necessarily expel you. They send you to an Alternative Education Project so you're out of school.

A number of children and young people in conflict with the law had not attended school for some time, offering a range of explanations:

Teachers treat you like you're nothing and they're something.

I can't read or write. Teachers used to make me read things out in front of the class – made a dick out of you.

Teachers should be able to pick up things [e.g. notice when things are not going well for young people].

It's all routine. Kids don't like routine. It messes them up. Kids are rebellious. They don't like looking the same, that's why they don't like wearing uniform.

I was at [Educational Resource Centre]. There was a blue room with fuck-all in it – the ‘time-out’ room – it just made me angry.

I left school at 14. They never gave me any support so I just left.

Young people questioned whether education was directed towards realization of their potential (CRC Article 29). Contrary to Riyadh Guideline 27, their experiences implied that teachers were not sensitized to their problems, needs and perceptions:

Education is made for the majority, not each individual... It’s not focused on individual needs, learning styles or interests.

Education is education, not just learning. You’re taught through education to learn a certain way, not your own way.

Failure to identify and respond to special educational needs was a key issue, especially for those defined as ‘disaffected’ or ‘disengaged’:

I was told I was stupid. I was thick an’ all. I never found out I was dyslexic ‘til I came here [Young Voices Project].

I didn’t find out about my dyslexia until I was in Rathgael [Juvenile Justice (Detention) Centre].

A number of young people considered education ‘should be relevant’, specifically addressing concerns central to their lives:

Especially financial issues, at an earlier age. You learn about stereotypes, discrimination and stuff like that at 15, but not about financial situations.

Schools should teach sex education, drug awareness, life skills.

You should learn history, about ‘the troubles’... your history – Irish history, about Northern Ireland.

In some communities, access to space or movement was restricted. This was defined as an imposition on their right to ‘go wherever you want to’ and to ‘be treated better in the community’. Limitations were imposed by neighbourhood sectarian boundaries – ‘Protestant and Catholic areas’ – by the police and paramilitaries:

Be in a place where we are not hassled by police – groups hanging around get hassled.

Paramilitaries stop kids being in the streets and parks.

There were significant deficiencies in play, recreation and leisure opportunities (CRC Article 31) due to lack of safe facilities, expense, limited access to space and restriction of their movement:

No after school activities and places to play.

No ball games... nothing to do but stand and drink, sniff glue.

Some areas don’t have parks or youth clubs, no play areas.

There's fuck-all to do. That's why kids are out on the streets.

People don't have money to go to leisure centres. They'd have to travel to them, and pay for that too.

Youth clubs provided organized activities mainly for children under 12. Most closed at 10.30 p.m. and at weekends. Young people reported being banned from youth clubs often for trivial incidents such as 'cussing' [cursing] or 'spitting gum'. Once banned, they had no access to activities and their friends also refused to attend. This resulted in groups of excluded young people with nowhere to go and nothing to do. As they commented, what most young people wanted was: 'just places to go with your mates'.

Standards of healthcare, treatment and rehabilitation (CRC Article 24; Riyadh Guideline 45) were compromised, particularly access to adequate, age-appropriate mental health services. Young people acknowledged that, for some, this undermined their right to life:

Young people don't know what [mental health provision] is there because it's not advertised... the organisations to go to should be advertised in primary schools.

There are not enough mental health services – self harm and suicide are problems in Northern Ireland.

Some people harm or take their own lives because of abuse, or not being able to talk because they think they won't be heard.

Protection from abuse and harm were key concerns, suggesting that more action is required to protect children from physical, mental or sexual violence and abuse (CRC Article 19(1)) and to develop procedures for responding to maltreatment (CRC Article 19(2)). Children and young people recognized that not being taken seriously or being 'scared to tell' could lead to reluctance to disclose abuse or harm:

They wouldn't want to tell someone in case they tell the parent or person who's beating them, or whatever, and they get it worse.

You wouldn't feel right telling a teacher – they know you, and some of them take grudges on you.

They think people won't listen to them.

Regarding youth justice, and reflecting previous research (Ellison, 2001; Hamilton et al., 2003; Kilkelly et al., 2004), young people discussed inappropriate responses by the police to young people on the streets in their communities:

PSNI [Police Service of Northern Ireland] can be abusive and sectarian.

PSNI don't treat kids with respect.

The police are harsh and cheeky when they speak to you.

When you're on the streets they [police] shout at you.

They lift you and put you in the back of the jeep, take you to the station and don't tell your ma.

Those involved in a project specifically for young people in conflict with the law highlighted how CRC Article 40(1) was not realized, with clear disrespect for children's sense of dignity and worth:

The cops... If you try to do something right, they don't see it. They just see the bad stuff you've done, or they assume you've done.

When you're on the streets they [police] shout at you.

A few recounted incidents of police violence or verbal abuse:

The police hit young people.

One wee man who tried to kill himself, the cops were shouting 'Where's the grave?'

Others recounted goading by police officers. When they reacted the police responded punitively:

They try to entice you to lose your temper – tell you you're worthless, say things about your family – to make you lose it.

They provoke you until you hit them. Then they can restrain you or hit you back.

On making complaints, they stated:

No. The Judge believes the cops all the time.

They wouldn't listen to young people.

Got no faith in the system.

In discussing treatment on arrest, a 15-year-old young person recounted her arrest for shoplifting, being held in a police cell overnight and release without charge the following day. Another young person recalled:

I was kept in [police cells] over the weekend, even though you shouldn't be held for more than 48 hours if you're under 18.

Contrary to CRC Article 12(2) and Beijing Rule 14(2), representation in court for young people and understanding of legal procedures were considered limited:

Representation is very poor.

Sometimes you get a crap attorney who doesn't care.

No rights – you're just expected to go and answer whatever questions you're asked.

Lots of young people don't understand what's being said in court.

For many children and young people, basic rights to education, health, welfare, play and protection were not realized. Lack of participation was evident in every aspect of their lives. Those in conflict with the law experienced violation of their rights, compounded by negative responses to their presence in communities by the police and reinforcement of their marginalization in youth justice processes.

Youth Justice and Child Custody

As stated above, the UN Committee (2002: para. 62) recommended that the UK should raise the age of criminal responsibility, reduce levels of custody and end the detention of children with adults. Because the Northern Ireland Assembly was suspended between October 2002 and March 2007, however, these recommendations were not debated, monitored or progressed. Yet legislation with clear implications for the administration of youth justice was drafted and adopted during this period.

Following the 1998 Belfast/Good Friday Agreement an independent review of the criminal justice system was established. The Criminal Justice Review (CJR: 2000) recommended a shift towards increased use of restorative justice, inclusion of 17-year-olds within the youth justice system and greater incorporation of human rights standards within legislation. Several recommendations were included under the Justice (NI) Acts 2002 and 2004. The 2002 Act (s. 53(1)) re-affirmed the principal aim of the youth justice system as protection of the public 'by preventing offending by children', the overarching responsibility being the encouragement of children 'to recognise the effects of crime and to take responsibility for their actions' (s. 53(2)). Agencies should 'have regard to the welfare of children ... with a view to furthering their personal, social and educational development' (s. 53(3)). The Act also introduced a range of dispositions, including Reparation Orders, Community Responsibility Orders, Custody Care Orders for under-14s, Youth Conference Orders and Plans, and a Youth Justice Agency (YJA) was set up to administer the system. However, the CJR did not recommend an increase in the age of criminal responsibility and it remains 10 years. The 2002 and 2004 Acts failed to recognize children's rights explicitly, including the principles of the child's best interests (CRC Article 3) and the separation of children from detained adults (CRC Article 37c; Beijing Rules 26 and 27; Havana Rules 29 and 38-55).

The imprisonment of children and young people, and the conditions in which they are held, provide a clear indication of how states respond to those most vulnerable and marginalized within their jurisdiction. In Northern Ireland, Woodlands Juvenile Justice Centre in the youth justice system, and Hydebank Wood Prison (for women) and Hydebank Wood Young Offenders Centre in the prison system, constitute the main disposals for children sentenced to, or remanded in, custody. Woodlands provides for the detention of children as young as 10 remanded or sentenced under the Criminal Justice (Children) (NI) Order 1998 or remanded under the Police and Criminal Evidence (NI) Order 1989 (PACE) (remand in custody by the police essentially for holding purposes). Children are sentenced to Woodlands under a Juvenile Justice Centre Order (JJCO), a determinate sentence normally for six months and no longer than two years. The period in detention is followed by a period of supervision of equal length in the community.

In 2003, Northern Ireland's three Juvenile Justice Centres (JJC's) were reduced to one, the Juvenile Justice Centre for Northern Ireland (at Rathgael), superseded in 2007 by Woodlands, a newly built facility. It has capacity for 48 boys and girls aged 10 to 17, although its use by the courts for 17-year-olds remanded or sentenced to custody is restricted. According to the UK Government (UN General Assembly, 2008: 8), in Northern Ireland 'the number of children sentenced to custody has been in steady decline'. Yet statistics from Youth Justice Agency Annual Reports show that the number of admissions to custody has remained above 400 since 2003. Total admissions to the Juvenile Justice Centre are recorded as: 405 in 2003-4; 464 in

2004–5; 413 in 2005–6 (Youth Justice Agency, 2006: 29) and 436 in 2006–7 (Youth Justice Agency, 2007: 48).

Hydebank Wood Young Offenders Centre (YOC) and Hydebank Wood Prison, operated by the Prison Service, provide for the detention of children as young as 15, including children assessed as a risk to themselves or others. Boys are detained with young men up to the age of 24. Girls are detained with adults in the women's prison, located in a house-unit within the male YOC site, and condemned as an inappropriate and inadequate environment for girls (Scraton and Moore, 2005; 2007). There has been tacit recognition by the State of the unsuitability of Hydebank Wood for the detention of girls, given that the Criminal Justice (NI) Order 2008 provides for the detention of 17-year-olds in the JJC where 'no suitable' YOC is available. Contrary to international human rights standards (CRC Article 37; Beijing Rule 26.3), however, the legislation fails to meet the duty to detain children separately from adults. Whether it will succeed in preventing girls from entering the prison system remains untested. In contravention of the right to the highest attainable standard of health care (CRC Article 24), the 2008 Order fails to remove provisions that subject 15- to 17-year-old children deemed at risk of self-harm to possible incarceration with adults.

The Experiences and Rights of Children in Custody

Convery and Moore (2006) conducted primary research with staff and children in the JJC into the protection of children's rights in custody. It included an assessment of progress towards implementation of recommendations made four years earlier by Kilkelly et al. (2002). The follow-up research found that the principle of custody for children as a 'last resort' (CRC Article 37; Beijing Rule 13; Havana Rules 1, 2 and 17) was not implemented. Three-quarters of children were held on remand, some for relatively minor offences. Subsequently, most did not receive custodial sentences. While CRC Article 40 requires member states to provide suitable alternatives to custody, JJC staff and children considered that the lack of alternatives resulted in overuse of custody:

There's still too many coming in to custody that shouldn't. It's a lot about support accommodation. (Staff)

The judge just had me remanded because they can't get me a place. (Young Person)

Over half the children in custody were committed from residential care backgrounds:

He was in and out of the [children's home] consistently ... He's in for nuisance offences He has serious learning difficulties and there's a concern that this may lead to serious harm. (Staff)

We had a boy who'd been in over 210 homes in 10 years ... That was horrendous ... and then you wonder why he offends. (Staff)

Many children had learning disabilities and mental health problems unaddressed in the community:

Young people are coming in now with more mental health issues. Psychologists [in the community] wouldn't touch them with a barge pole. (Staff)

First days and nights were anxiety-filled and staff agreed that 'all kids are scared ... all need reassurance, they're still kids'.

When you're in your bedroom ... you can think about things. You can think about strange things, so you can. ... like hanging yourself or something. Thought about it a few times.

Daily life was structured and busy. House meetings were held each morning enabling children and staff to exchange information. Children could raise questions and requests. In the Centre school, small groups studied a range of subjects. Many children had been out of education prior to admission yet most were enthusiastic. Staff and children considered 'rehabilitation programmes' ineffective given the scale of problems faced on release. Staff recognized that the issues faced by children could not be dealt with by offence-related programmes:

The Agency [the Youth Justice Agency] wants to address youth offending. We need to look at the bigger picture of the welfare of children, their right to be safe and cared for.

Children had immediate access to an on-site psychologist, in marked contrast to the lack of adolescent mental health provision in the community (see Kilkelly et al., 2004). They acknowledged the care received and were impressed when workers spent their own money buying treats for the unit: 'staff just care, that's all it is'.

International children's rights standards emphasize the importance of encouraging children's connection with their families (CRC Article 37c; Havana Rules 60 and 61; ECHR Article 8), but the research found that visiting children in the JJC was often difficult due to cost, distance and logistics. It was hard emotionally for children, to the extent that some preferred to forego visits:

I don't really like visits. Just do without them. Seen my ma and da once, but they leave and you don't. I don't like when you're sitting and they go.

... look out the window and see them leaving. It annoys you.

Despite emphasis on domesticity and 'normality', the JJC operated as a high-security facility. Care professionals were accompanied by 'operations' (security) staff when escorting children. Regardless of risk assessment, children were subject to a high level of supervision. Staff maintained that children who had experienced minimal boundaries welcomed a highly structured and secure regime, yet children found the lack of privacy and space claustrophobic:

I wanted outside and staff have to watch you no matter where you turn; you can't open doors and you can't do anything, so you can't. [At the start] it was stressing, stressing so it was.

Some staff considered security levels unnecessary, contravening children's right to privacy (CRC Article 16):

We need a balance between care and control, to get away from a prison ethos. I think for some people [other staff] there is still an element of struggle.

Havana Rule 28 states that different categories of young people deprived of their liberty should be separated, based on provision of the type of care best suited to individual needs and protection of their integrity and well-being. However the JJC accommodated a broad age range of children in a confined and restricted space. This was often frustrating for individuals:

Young people start arguments and staff say 'ignore him' but how can you ignore him when you live with him 24/7 a day? ... kids shouldn't be in here. See if you're 12, you shouldn't be allowed to be in a juvenile justice centre, there should be a younger place for kids that age.

I'm stuck here with those kids and they're all sitting yapping my ear off sometimes and I have to go to my room because they're doing my head in.

Children differentiated between staff who listened and respected them, and others who teased and treated them disrespectfully:

They're a better laugh [in another house]. In here, they just shout at you ... Any time you stand up, they tell you to sit down again.

Some staff listen to you now. You say, 'don't be getting on' [teasing or annoying] 'I don't like it' and then they stop doing it. But some staff keep going on and on and on and don't listen to you.

Disciplinary measures based on a 'progressive regime' allowed children to earn rewards such as later bedtimes, televisions and computer game consoles for their rooms. The regime, however, could also silence children:

When I came in staff says I used to be 'lippy' [cheeky or outspoken]. But now I just listen to them and I've stopped talking back. I just don't talk back now because I know if I talk back it's a problem. I'll get an adverse report.

Human rights standards emphasize that children in detention have the right to be treated with humanity and respect, in a manner which takes into account their needs and protection from harm or risk (CRC Articles 19 and 37c; Beijing Rule 26.2; Havana Rule 28). Contravening such standards, children were routinely handcuffed during transportation to and from court. The staff of the private security company franchised to transport children had no training in how to respond to mental health or child protection concerns or adolescent behaviour. On admission, children were given a compulsory 'pat down' body search. While remaining clothed, this was distressing - particularly for those with histories of abuse:

I hate other men touching my body. I hate people touching my body... they touch you there [top of legs] search you and you feel like hitting them.

Since the initial investigation into the rights of children in detention (Kilkelly et al., 2002), and following staff training in de-escalation techniques, incidents of restraint had reduced but the 2006 research found that force was still regularly used. Physical Control in Care (PCC) involves physical restraint in a standing position. Staff had concerns about its safety and young people felt degraded:

It's not fair ... shouldn't take six people to hold a wee boy down. They [staff] got a shield and made his nose bleed. Bent his fingers back. It's supposed to calm you down, but it makes you more angry.

They're not allowed to put handcuffs on you for a fact; they put handcuffs on me and then started, every time I moved, they went like that there with the handcuffs [lifted his hands up] and nearly broke my wrists. I had cuts and everything right there, they were pulling that hard ... I don't think it's fair the way they restrain you in here.

Restraint was used in response to threats or violence against staff or other children. Recorded incidents included references to children ‘threatening to stab staff’ or attempting to ‘head butt staff member’. Researchers, however, witnessed a child being threatened with restraint for refusing to go to bed. The research demonstrates that restraint and force were not confined to exceptional circumstances following the failure of alternative methods (Havana Rule 64). It also indicates that children experienced humiliation.

Only two girls were held in the JJC at the time of the research and one was too distressed to participate in the research. The other raised issues of privacy and would have preferred more girls with whom she could socialize. Detention was isolating and distressing for girls, who arrived in custody usually from looked-after care backgrounds and had histories of abuse. Staff raised the case of a recently detained young girl whose mother had died and father was in prison. Accompanied by three social workers she was admitted fearful and distressed. Within the JJC there was a failure to provide gender-specific responses to girls’ personal needs and evidence of a less than equal experience than that of boys in custody (Beijing Rule 26.4).

Many children returned to custody soon after release and eventually ‘graduated’ to the Young Offenders Centre at Hydebank Wood. Despite successes in education and other programmes, there was no evidence that their progression was integrated into educational and/or vocational training on release (Havana Rule 38). Further, children were released to environments characterised by fractured families, failure in schooling, lack of mental healthcare provision and communities suffering multiple deprivation and high levels of violence. For example, a 15-year-old boy recounted the death of his father, witnessing the killing of two friends and another friend shot in the knees in a paramilitary punishment. Staff were pessimistic about children’s ‘rehabilitation’:

We’re not sending them back to a nice loving family, we’re sending them back to 10 mates who all steal cars every night and take joints every night. That peer pressure is massive.

The Committee on the Rights of the Child (2007: para. 10) states that:

... the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

CRC Article 37 requires that custody for children be a last resort and for the shortest appropriate time. For children in the JJC, this was not the case, especially for those admitted under PACE (remand on police authority) and those coming direct from residential care. High turnover and disproportionate levels of remand made it difficult to implement care plans or to work with children on problems that possibly contributed to their offending. The CRC and the Beijing Rules emphasize the goals of rehabilitation and resettlement. Yet staff and young people expected that many children would return to custody following release. In contrast with progress in educational and health care, children in the JJC experienced continued breaches of rights through isolation, loss of privacy and use of physical force.

A recent inspection of Woodlands by the Criminal Justice Inspectorate of Northern Ireland reinforced these findings. It noted concerns about the high turnover rate of children and the disproportionate number of children directly admitted from residential care, which had become ‘longstanding features of juvenile custody in Northern Ireland’ (CJINI, 2008: vii).

Many children in custody are ‘neither serious nor persistent offenders’ but ‘troubled children’ placed in custody as a result of ‘benign intent on the part of courts or police’. The report states:

When unsure about how to deal with them, they were placed in custody as much for their own safety as in response to their offending behaviour ... Such placements breach international safeguards, and inappropriate use of custody for children remains a more pronounced problem in Northern Ireland than elsewhere in the UK (CJINI, 2008).

Only seven per cent of those in custody in the JJC between 2006 and 2007 had received a custodial sentence, the majority were on remand (CJINI, 2008: 4). Thirty per cent of all admissions during this period came from looked-after care backgrounds – courts, social services and some children considered ‘they were better off in the JJC than living at risk in the community or in residential care’ (CJINI, 2008: 5). Many looked-after-children ‘were already damaged and criminalised ... trivial offences provided the opportunity to use custody as quasi-care’ despite the fact that ‘it could be of no benefit for marginalised children to experience custody for insufficient reason’ (CJINI, 2008). Poor mental health was common – of 30 children in the JJC during the inspection, 20 had a diagnosed mental health disorder, 17 had a history of self-harm and eight had at least one suicide attempt recorded, eight were on the child protection register and 14 had a statement of educational needs (CJINI, 2008: 32). Staff identified ‘increased levels of stress, unresolved trauma and problems associated with alcohol and drugs among the JJC population’ (CJINI, 2008).

Critical Analysis and Rights Discourse

Rituals of socialization and the imposition of disciplinary power are, in part, manifestations of adult hegemony, delivered with the authority of ‘parenthood’ or ‘guardianship’ and normalized as ‘common-sense’. Central to the universal acceptance of this authority, extending to the lawful use of physical assault under the guise of ‘reasonable chastisement’ is a broader context of ‘subtle coercion’ (Foucault, 1977). In this taken-for-granted and deeply imbedded process, adults show little appreciation that children’s experiences could be considered appropriate or relevant, regularly denying opportunities for children to participate in decisions that frame their lives and channel their destinies. This construction of adult–child relations extends and prevails throughout private and public domains, particularly in situations where parents or guardians and state institutions enter negotiations about the assumed ‘best interests’ of the child.

What does a critical analysis offer to a contemporary understanding of children and young people in conflict with the law? Critical research is revelatory in its commitment to locating personal experiences and social interaction in institutional and structural contexts. It maintains that social life cannot be detached from the determining histories and contexts of structural inequalities inherent in relations of class, ‘race’, sectarianism, gender, sexuality and age. It locates the processes and procedures of institutions – state, private corporations, religions, and so on – within political economies and their global dynamics.

States proclaiming commitment to full, participatory democracy and to children’s rights compliance appear reluctant to consult children, understand their feelings, identify their needs and include their views. ‘Rights discourses are complex’ and contested (Scruton and Haydon, 2002: 312). They affirm the right *to* something and they defend *against* the actions of others. While they establish minimum acceptable standards (embodied in codes, treaties and conventions),

they also have the potential to provide redress for breaches, particularly against state institutions and their mechanisms. As Hudson (2001: 166) concludes, 'universal statements of rights' and 'attempts to interpret them as a practical guide to governance' are 'starting points' for the 'development of a jurisprudence of rights geared to deciding conflicts and upholding rights in specific cases'. To that end, a 'regime of rights is one of the weak's greatest resources' (Freeman, 2000: 279–80).

Critical perspectives remain sceptical about the potential of a human rights framework to effectively challenge inherent structural inequalities. Yet rights-based, child-centred interventions have the capacity to provide an alternative to 'constructions of children as innocent, vulnerable and weak through promoting their right to information, expression of views and their participation'; securing 'full transparency of formal procedures and practices while constructing effective political and professional accountability measures for all interventions' (Scruton and Haydon, 2002: 325). Recent consultation on the substance of a Bill of Rights for Northern Ireland provided a historic opportunity to bring legislation, policy and practice into line with international children's rights standards. The working group on children and young people proposed that children's rights should be afforded maximum protections (Bill of Rights Forum, 2008). Proposals relating specifically to youth justice included: detention as a last resort; development of effective alternatives to custody; separation of detained children from adults; removal of children from prison service custody; and raising the age of criminal responsibility to 16.

Yet the debate over rights, their implementation and the accountability of states to meet international standards is not conducted in a vacuum. As discussed in the introduction to this article, the demonization and exclusion of children and young people, and associated calls for 'moral renewal', have promoted a dominant popular and political discourse that is punitive. Rooted in individual and social pathology, the discourse places significant emphasis on personal and social responsibility. It reduces 'rights' to a simplistic transactional relationship with 'responsibilities'. Children in conflict with the law are regarded as offenders and offensive, criminal and anti-social, rather than as children with complex needs and rights-holders. Even state agencies with traditions steeped in care and support have experienced intense pressure to realign their work towards crime prevention. State-based restorative justice approaches are regularly offered to children and young people not as distinct from, but attached to, the criminal justice system – their processes offering little to assuage the structural contexts in which offending behaviour occurs.

A critical analysis shifts the emphasis from the language of crime prevention to recognizing children's distinct status – fully cognisant of individual experiences, evolving capacities, familial, social and material contexts. It prioritizes personal well-being and adaptive welfare provision derived in the identification of needs and realization of rights rather than demands for prevention of (re)offending, deterrence, retribution and punishment. To that end, it challenges the pervasive politics of criminalization, its associated net-widening and increased imprisonment. The 'best interests' principle recognizes needs specific to individual children and the centrality of their active participation, through which reflection and informed decision-making contribute to their ability to take responsibility for their behaviour and personal development. Non-discrimination and inclusion, survival and development, and effective participation are key CRC principles. They can be achieved only through transformation of overarching material determinants and ideological rationalizations of 'individual choice', voluntarism and pathologization.

A significant element within the political–ideological discourse, and one that is fast developing in Northern Ireland, is the pre-eminence and influence of media reporting and amplification of children’s ‘offending’, ‘deviant’ and ‘anti-social’ behaviours. Not only does this coverage mask the reality of ‘crime’ and ‘harm’ perpetrated, but also it fails to reveal the harm done to children and young people who endure: ageism; economic deprivation; ‘reasonable chastisement’; physical and sexual abuse; inadequate education, health and leisure provision; racism, sectarianism and homophobia. A rights-based agenda must build on the baseline established by civil-political and economic-social standards and target the structural determinants that inhibit children’s meaningful and effective participation. Given the legacy of conflict and violence in Northern Ireland, and the special circumstances of social, political and economic transition, this is an essential agenda, providing an opportunity for positive change both now and in the future.

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Dr Una Convery is a Lecturer in Criminology at the University of Ulster.

Ms Deena Haydon is an Independent Research and Strategy Consultant based in Belfast.

Dr Linda Moore is a Lecturer in Criminology at the University of Ulster.

Professor Phil Scraton is Professor of Criminology in the Institute of Criminology and Criminal Justice, Queen's University, Belfast, Northern Ireland.